
(2001) 03 RAJ CK 0049

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1292 of 1993

Mohan Lal Singhal and Others

APPELLANT

Vs

Urban Cooperative Bank Ltd., New Colony

RESPONDENT

Date of Decision : 23-03-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226
Industrial Disputes Act, 1947 — Section 25F, 29, 33

Citation : (2002) 1 RLW 338 : (2002) 5 WLC 525 : (2001) 4 WLN 308

Hon'ble Judges : J.C. Verma, J

Bench : Single Bench

Advocate : Ajay Rastogi, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

Verma, J.—The petitioner had entered in the employment of Urban Cooperative Bank Ltd. on the post of Clerk on daily wages way back in March, 1978 on consolidated salary of Rs. 250/- per month vide annexure-1. The petitioner was appointed as trainee clerk for a period of three months. The appointment was continued. His service came to an end on 1.9.78, but the same was challenged before the Labour Court. The petitioner was successful in Labour Court vide award dated 1.8.85, which was challenged by respondent by filing the writ petition No. 118/86. The High Court vide order dated 20.8.86 set aside the award of Labour Court and remanded the case back to Labour Court for appropriate award. Ultimately the award was passed on 19.9.87 (ann. 2), whereby the termination order was set aside. The award dated 19.9.87 (ann. 2) was challenged by filing the writ petition No. 1800/88, which writ petition came to be dismissed vide order dated. 9.8.88 (ann. 3).

2. The award dated 19.9.87 (ann. 2) was not implemented till the petitioner approached the Labour Court by filing application for prosecution u/s 29 of the Industrial Disputes Act, 1947, but before the prosecution could be launched, the petitioner was reinstated in service vide letter dated 1.10.88 (ann. 4).

3. The petitioner was taken back in service as Trainee Clerk. The petitioner represented to such designation. The petitioner has also filed the application u/s 33(c)(2) of the ID Act for computation of amount arrear of salary. Even though the salary of a clerk was much higher, but the petitioner was being paid consolidated salary Rs. 250/- only. Later on, the salary was fixed at Rs. 835/- only w.e.f. 19.1.91. The petitioner was claiming salary in regular pay scale of the post of clerk, on which post he was working. He again approached the High Court by filing the writ petition No. 4578/89, which came to be decided vide order dated 23.7.92 (ann. 6) with the direction to respondent to consider the case of petitioner for regularisation, confirmation and promotion and to hold the interview for the purpose of his suitability.

4. The order of the High Court dated 23.7.92 is said to have complied with by interviewing the petitioner, but finding him not suitable for the job of clerk, his services were terminated vide order dated 17.2.93 (ann. 7). While terminating the service of petitioner, the respondent had once again committed the same mistake of not complying with the mandatory provisions of Section 25F of the ID Act as no retrenchment compensation was paid. Even though it is stated in written statement that the petitioner was offered retrenchment compensation but he did not collect the same.

5. However, the point being argued by the learned counsel for petitioner is not that there is violation of any provision of the ID Act, but submits that the impugned order dated 17.2.93 (ann. 7) is arbitrary and in violation of Articles 14 & 16 of the Constitution of India. It is further submitted that the High Court vide order annexure-6 had directed the respondent to consider the case of petitioner for regularisation and confirmation etc. and the order dated 17.2.93, whereby the petitioner has been terminated from since is not proper and in compliance of the order of High Court. It is further submitted that the petitioner had been serving on the post since 1978. He approached two times to High Court and even Labour Court had ordered in favour of petitioner. Many junior persons to petitioner, who were appointed in the year 1992 etc. were retained any prays that the impugned order dated 17.2.93 be quashed.

6. Reply to writ petition has been filed by the respondent, the material facts, as stated above, are not denied except with the submission that the impugned order is not assailable and that the petitioner was properly interviewed to judge his suitability on the post. He was not found suitable, and therefore, no illegality has been committed nor there is any violation of any provision of law.

7. The court while deciding the writ petition vide order dated 23.7.92, was of the view that the Labour Court vide order dated 19.3.87 had directed the respondent about entitlement of petitioner of all the benefits. For the reason that labour court had not specifically mentioned whether the petitioner was entitled for regularisation, confirmation or promotion, this court had observed that the Labour Court, as a matter of fact, had given all benefits including regularisation, confirmation and promotion provided he is found suitable. Therefore, this court

directed the respondent to hold the interview and if he is found suitable, to award all benefits of regularisation, confirmation and promotion.

8. After going through the impugned order dated 17.2.93 (ann. 7), I am of the opinion that the order cannot be sustained in law being totally arbitrary. The order annexure-7 states that on interviewing the petitioner, he was not found suitable for the post of Clerk and the report was placed before the Board of Directors. The Board of Directors decided to terminate the service of petitioner. The petitioner is graduate and had joined the service of respondent bank in the year 1978 and had been working in bank from time to time. No where in the written statement, it has been stated that the service of conduct of the petitioner was not upto mark. The impugned order does not speak as to in what respect the petitioner was not suitable for the post of clerk, having been appointed in the year 1978. He is deemed to be in service at least for 15 years and an employee who has put in service of 15 years may be including notional service, cannot be said that he is not suitable for the post unless there is some report against the work of petitioner, which is not the case of respondent. As a matter of fact, this court had directed the respondent to see the suitability for regularisation and confirmation, which could only be proved by length of service. I agree with the contention of counsel for petitioner that the suitability was to be judged on the point of regularisation and confirmation and not for the purpose of appointment. Apart from above, because of the interim order granted by this court, the petitioner is said to have been in service and in continuing, it shall be very hard, otherwise too, to ask the petitioner leave the job when he has already put in service of more than 20 years.

9. For the reasons mentioned above, the writ petition is to be allowed. The order of termination of service dated 17.2.93 (Ann. 7) is quashed and the petitioner shall continue in service as if he was not terminated and remained in service throughout. The petitioner shall be entitled to all other consequential benefits i.e. of continuation, regularisation, regular pay, increments and also promotion if any provided he fulfils other qualifications from the date when his immediate junior was so extended such benefits.

10. Counsel for petitioner also stated at bar that the petitioner, despite having been put in service of 23 years, is still getting minimum fixed salary without any increment, selection grade and without any promotion, which may be provided by issuing direction to respondents.

11. For the reasons and discussions made above, the writ petition is allowed with the cost of Rs. 2,000/-. The respondent shall consider the case of petitioner and shall remove all grievance of petitioner within a period of two months. AH arrears shall be paid to petitioner within one month thereafter. In case this exercise is not done within three months, it goes without saying that the petitioner shall be entitled to get the interest at the rate of 12% till actual payment is made.

12. With the above observations, the writ petition is allowed with the cost of Rs.

2000/-.